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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,068	09/30/2005	Yasushi Enokido	81864.0058	7550
26/021 7590 10/01/2008 HOGAN & HARTSON LLP. 1999 AVENUE OF THE STARS SUITE 1400 LOS ANGELES, CA 90067			EXAMINER KUNEMUND, ROBERT M	
			ART UNIT 1792	PAPER NUMBER
			MAIL DATE 10/01/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/530,068

**Applicant(s)**

ENOKIDO, YASUSHI

**Examiner**

Robert M. Kunemund

**Art Unit**

1792

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3, 4, 7, 9-19, 23, 25, 26 and 28-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 7, 9-19, 23, 25, 26 and 28-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 7, 23, 25, 26, and 28 to 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung et al (6,555,406) in view of Aoki et al (2003/0020501) and Wen et al (6,727,833).

The Leung et al reference teaches a method of creating photonic crystals. A first layer is fabricated with two dielectric materials. One of the materials is air. The layer is made so that the materials are formed in a periodic array in one plane. A second layer can be created in the same manner as the first with the same materials, note figures. The sole difference between the instant claims and the prior art is the lamination step and printing. However, the Aoki et al reference teaches combining two or more photonic layers together by lamination, note figures. The Wen et al reference teaches using printing means to form the dielectric layers, note fig 8. It would have been obvious to one of ordinary skill in the art to modify the Leung et al reference by the teachings of the Aoki et al and Wen et al references to use printing means and laminate the layer together in order to ensure proper alignment of the layers creating a more uniform structure.

Claims 9 to 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leung et al (6,555,406) in view of Aoki et al (2003/0020501) and Wen et al.

The Leung et al, Wen et al and Aoki et al references are relied on for the same reasons as stated, supra, and differ from the instant claims in the filling of the second dielectric. However, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable second dielectric filling in the combine references in order to make a crystal with the desired properties.

*Response to Applicants' Arguments*

Applicant's arguments filed June 24, 2008 have been fully considered but they are not persuasive.

Applicants' argument concerning the means to create the array is noted. However, the reference in fact does teach the entirely claimed invention. The primary reference does teach the array which goes through the entire layer. The combination with the secondary references teaches the materials and means to create the array. It is duly noted, that the term penetrate does not mean all the way through. Thus, the claims are not as limited as argued by applicants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Kunemund whose telephone number is 571-272-1464. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on 571-272-1303. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert M Kunemund  
Primary Examiner  
Art Unit 1792

RMK

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